

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

WHOLE WOMAN'S HEALTH
ALLIANCE, *et al.*,

Plaintiffs,

v.

FOOD AND DRUG ADMIN., *et al.*,

Defendants.

Case No. 3:23-cv-00019-RSB

JOINT STATUS REPORT

The parties file this Joint Status Report to (1) provide the Court with an update on the production of the administrative record and (2) set forth the parties' respective positions on future scheduling.

1. Defendants produced the administrative record to Plaintiffs on September 5, 2023. Following production of the administrative record, Defendants filed a certified index to the administrative record with the Court.

2. The parties continue to disagree about whether, apart from production of the administrative record, this case should be stayed pending the resolution of appellate proceedings in *Alliance for Hippocratic Medicine v. FDA*, No. 2:22-cv-223 (N.D. Tex.).

- a. **Defendants' position:** The Court should grant the motion to stay and thus not set deadlines for Defendants' answer or the parties' summary judgment briefing at this time. Defendants note that the Fifth Circuit has issued its decision in *Alliance*, see No. 23-10362, 2023 WL 5266026 (5th Cir.

Aug. 16, 2023), and that the government will be seeking Supreme Court review of the Fifth Circuit's decision.

- b. **Plaintiffs' position:** For the reasons stated in briefing on the Motion to Stay, *see* ECF No. 33, at 15-16, and at argument, Plaintiffs continue to oppose the Motion regardless of continuing proceedings in *Alliance*, and believe the case should proceed to summary judgment alongside *Washington v. U.S. Food and Drug Administration*, No. 1:23-cv-3026, 2023 WL 2825861 (E.D. Wash. April 7, 2023). Given that the administrative record is voluminous, Plaintiffs would be amenable to an extended schedule for summary judgment briefing.
3. Per this Court's August 21, 2023 Order, ECF No. 42, at 22, the parties advised the Court of their availability for a status conference at 9:30 AM on September 19, 2023, which the Court has now scheduled.

September 5, 2023

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Respectfully submitted,

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Certificate of Service

I certify that the foregoing was served on all counsel of record via ECF on
September 5, 2023.

/s/ Noah T. Katzen
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